

*United States Court of Appeals
for the Second Circuit*



APPENDIX

Docket No.

75-1224

To Be Argued By
MAXWELL HEIMAN

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P/S

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA

Appellee

VS.

MICHAEL CHIARIZIO

Appellant

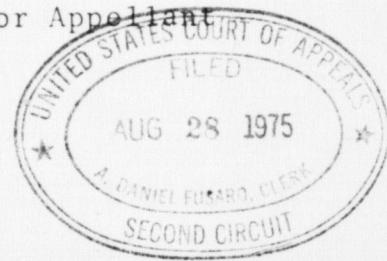
ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

APPENDIX

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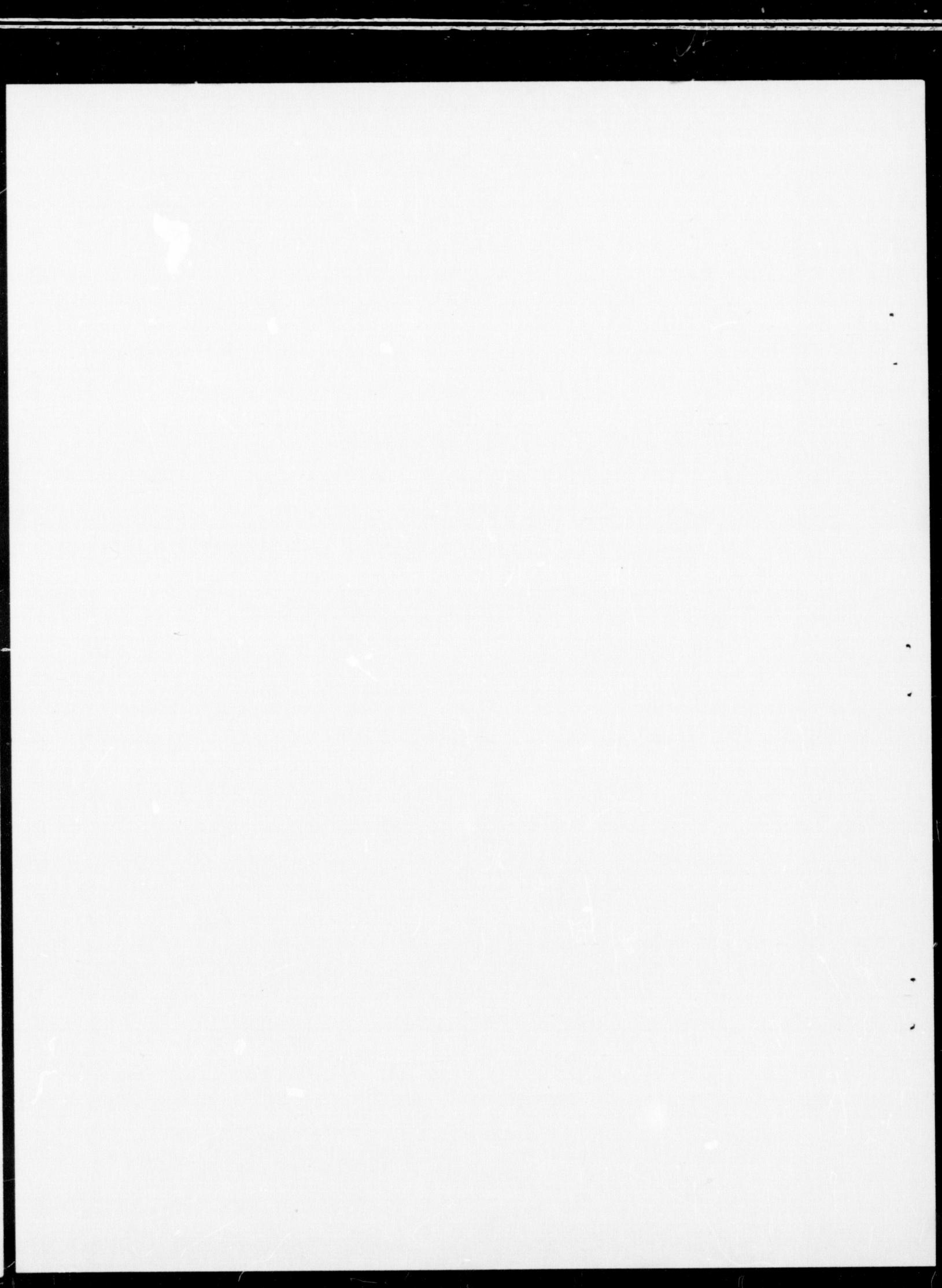
EXCERPTS FROM THE HONORABLE M. JOSEPH BLUMENFELD'S
DECISION ON THE MOTION TO DISMISS THE INDICTMENT
AND THE MOTION TO SUPPRESS EVIDENCE.

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT
UNITED STATES OF AMERICA :
v. : CRIMINAL NO. H-74-51
MICHAEL CHIARIZIO, ET AL :
.

RULING ON DEFENDANTS' MOTIONS TO DISMISS
THE INDICTMENT AND SUPPRESS EVIDENCE

Motion to Dismiss the Indictment

The defendants also advance a rather ingenious, but ultimately meritless, argument based upon the doctrine of pardon and abatement. The indictment in this case was issued on April 9, 1974, and charged the defendants with being continuously in violation of Conn. Gen. Stat. Ann. Section 53-295 (1958) from March 1, 1973 through May 15, 1973. (Footnote omitted). On June 7, 1973 as part of Pub. Act No. 73-455, Section 53-295 was repealed. As a result, the defendants argue, under the doctrine of pardon and abatement, all proceedings under Section 53-295 "which were not passed and closed, are thereby arrested as if the statute never existed."



Defendants' Brief at 9. As Section 1955 depends upon the violation of a state gambling statute, they continue, all prosecutions under Section 1955 which depend upon Section 53-295 must be abated.

It is unnecessary to pass upon the defendants' basic argument that the repeal of a state gambling law subsequent to the commission of an offense under it would necessarily abate a federal prosecution under Section 1955. Cf. Revel v. United States, ____ F. 2d ____ (5th Cir. 1974) (federal, not state, statute of limitations applies under Section 1955). This is because the doctrine of abatement and pardon has no application under the facts of this case. Section 53-295 was only technically repealed under Pub. Act No. 73-455 which was a comprehensive enactment of a model gambling law. It is quite clear that the offenses which were proscribed and relied upon by the government under Section 53-295 remain illegal under Pub. Act No. 73-455, Sections 1 (3), 2, 3(d), 5(d). See United States v. Romanello, Crim. No. H-203 (D. Conn., Sept. 14, 1972).

. . .
Motion to Suppress Evidence

The defendants have moved to suppress the results of wiretaps conducted by the Federal Bureau of Investigation in the course of the investigation which led to the indictment in this case. As in the case of their motion to dismiss, several of the grounds of their motion are meritless in light

of the existing and controlling case law and thus warrant little discussion. Other grounds require more considered treatment.

The evidence which they seek to suppress was the fruit of two series of wiretap interceptions authorized by this court pursuant to the provisions of 18 U.S.C. Section 2518 (1970). The first such wiretap was authorized on March 22, 1973 upon an application submitted by Paul Coffey, Departmental Attorney for the United States Department of Justice, which was supported by the affidavit of FBI agent Dewey Santacroce and the approval of then Attorney General Richard Kleindienst, as required by the provisions of 18 U.S.C. Section 2516(1) (1970) (Footnote omitted). At the same time, the court also authorized the use of a pen register, a device which reveals the telephone numbers of all outgoing calls dialed from the wiretapped telephone.

The principal target of their motion is the authorized wiretap (hereinafter referred to as the "Chiarizio tap") on the telephone of Mrs. Maria Rubera of 1889 Broad Street in Hartford. In Agent Santacroce's affidavit, Mrs. Rubera was identified as the grandmother of defendant Michael Chiarizio who resides in an adjoining building. The factual material establishing probable cause for the authorization was largely the fruit of an earlier authorized wiretap on the telephone of one Joseph Telesca, not a defendant in this case, during February 1973. That wiretap revealed the existence of a betting relationship between Telesca and the defendant

Chiarizio which the government had reason to believe was of a wide-reaching nature. The Chiarizio wiretap authorized on March 22, 1973 was designed to uncover the full dimensions of that gambling operation.

The wiretap was authorized for a period of fifteen days with an interim report on its progress to be made to the court after the fifth day. Such a report was submitted and the wiretap interception was terminated on April 2, 1973, ten days after it had begun.

The second series of wiretaps involved in this case was authorized on May 8, 1973. Again the court authorized the use of a pen register device on the "tappee's" telephone. The authorized wiretaps were on the telephones of defendants Schaefer and De Sena. Agent Santacroce's affidavit in support of the application for wiretap authorization cited the results of the Chiarizio tap and contained corroborating information from a confidential source regarding defendant Schaefer's involvement in gambling activities. These wiretap interceptions began on May 9, 1973 and terminated on May 14, 1973.

. . .

B. Compliance with Section 2518(1)(b)(iv)

The defendant's most serious challenge, and one to which two days of evidentiary hearings were devoted, was the failure of the government to name defendant Sapere in its application to the Court as a target of the March 22, 1973 wiretap, which, they argue, was required by the terms of 18

U.S.C. Section 2518(1)(b)(iv) (1970) (Footnote omitted). As a corollary, they argue that the government should also have informed the court of a November 1971 application to wiretap the telephone of Sapere as required by 18 U.S.C. Section 2518(1) (e) (1970). This second argument requires no separate consideration. As the government concedes, if Sapere should have been named in the March 1973 application, then it follows that the November 1971 wiretap of Sapere should also have been disclosed to the court. The reverse, of course, is equally true. 10/

The statute in question requires the applicant for wiretap authority to provide the court with a "full and complete statement of the facts and circumstances relied upon by the applicant to justify his belief that an order

10/

Interestingly, both challenges are joined in by all but one of the defendants, rather than just the defendant Sapere, the individual who it is contended should have been named in the application. In United States v. Curreri, 368 F. Supp. 757 (D. Md. 1973), on the other hand, only the defendant in Sapere's position sought to have his wiretapped conversations suppressed. The defendants here implicitly argue that the failure to mention Sapere tainted and vitiated the wiretap in toto. In light of United States v. Giordano, supra in which the court stressed the importance of strict compliance with all elements of the wiretap statute, it would appear that the defendants' position may be tenable. See 18 U.S.C. Section 2518(10) (a) (1970); United States v. Bellosi, 501 F. 2d. 833, 841-842 (D.C. Cir. 1974). However, since it is concluded infra that the government did comply with the requirements of 18 U.S.C. Section 2518(1)(b)(iv), it is not necessary to reach that issue.

should be issued, including . . . (iv) the identity of the person, if known, committing the offense and whose communications are to be intercepted." 18 U.S.C. Section 2518(1)(b) (iv). It is undisputed that Emil Sapere was not mentioned in either the affidavit of prosecutor Coffey or FBI Agent Santacroce, nor did his name appear in the March 22, 1973 order of the court authorizing the Chiarizio tap. It is also undisputed that Sapere's conversations were intercepted during the course of that wiretap. Thus, the issue presented is whether or not the government knew enough about any gambling relationship between Chiarizio and Sapere at the time they applied for wiretap authority to require them to have named Sapere in that application.

The defendants' assertion that Sapere was "known" as a gambling associate of Chiarizio is based upon the following facts. In October 1971 the FBI was investigating the gambling activities of Emil Sapere, his brothers and others in the Hartford area. In aid of that investigation an application was submitted to the court for authority to tap the telephones of Anthony Cianfaglione and Michael Ferro, alleged confederates of the Saperes. Special Agent Richard Ludwig, the agent in charge of that investigation, submitted an affidavit in support of the application. Much of the information contained in that affidavit had been provided to Special Agents Ludwig and Edward Stiles by an informant ("Source 1"), purportedly a close associate of the

Saperes. On April 30, 1971, Source 1 informed the agents, inter alia, of the following facts as reported in Agent Ludwig's affidavit:

"G. That numerous 'independent' book-makers in the Hartford, Connecticut, area have layoff ^{11/} arrangements with the SAPEREs, including MICHAEL CHIARIZIO, who operates from his residence at 1891 Broad Street, Hartford, and RALPH SANZO, who operates from a restaurant known as 'The Place for Steak', 199 Oakwood Avenue, West Hartford, Connecticut." (Footnote not in original).

That information was corroborated through subsequent contacts with Source 1 and was alleged in the affidavit to be accurate through August 5, 1971. That was the only mention of Michael Chiarizio in the twenty-one page affidavit. Significantly, Chiarizio was not mentioned as a target of that wiretap, nor of a second wiretap which was placed on the telephones of Emil and Dominic Sapere pursuant to a court order of November 11, 1971.

The defendants' case is also built upon the interception of two conversations during the November 1971 wiretap in which the defendants allege that Chiarizio exchanged gambling information with Sapere. During the course of that wiretap, the pen register device registered that Sapere made several attempts to call a number which the FBI later learned through the telephone company was that of Edwina Dawidowicz,

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"When a betting person has more money bet on a participant than he wishes, he transfers all or a part of the bet to someone else. This is called laying off."
United States v. Bobo, 477 F. 2d 974, 990, n.9 (4th Cir. 1973).

known to Agent Ludwig as Chiarizio's common-law wife. Two of those calls were completed, intercepted and transcripts ultimately made of the conversations which took place between Sapere and a male who identified himself as Matt or Mike, as noted in the transcript. The two conversations in question were brief, but seem to have involved a betting transaction, although they were conducted in rather cryptic jargon. 12/

The defendants argue that Matt or Mike was in fact Michael Chiarizio and that the government knew it at the time by virtue of their knowledge of the relationship between Chiarizio and Ms. Dawidowicz, the person in whose name the number called was registered. The government denies having made such an identification. This denial is credible in light of the fact that these brief conversations were only two of over one thousand intercepted at the time, the speaker's identification of himself was indistinct, and the FBI did not learn that the number called was that of Ms. Dawidowicz until several days after the interception had taken place.

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At the hearing on this motion, Agent Ludwig was rather hesitant to characterize either of these conversations as being gambling-related. However, he did admit that they could reasonably be interpreted as such. Because it really makes no difference to the ultimate disposition of this claim, it will be assumed that the conversations were gambling-related and that the agent monitoring the telephone calls recognized them as such at the time.

Even if the government's disclaimers on this point were to be discredited, it is clear that the investigators did not consider these calls to be of very great importance. They were attempting to identify those persons with whom the targets of the wiretap were carrying on significant gambling operations. The first of the two intercepted conversations itself indicated the limited nature of the relationship between Sapere and Chiarizio (assuming that he was the other participant in the conversation) at that time. Source 1 had informed Agents Ludwig and Stiles of a "lay-off" relationship between Chiarizio and Sapere, yet the first thing Sapere said to Chiarizio upon reaching him on the telephone was: "Gez, you don't call me no more." Transcript of Intercepted Conversation of Nov. 15, 1971, 7:02 P.M., log 4 at 43. Even if the agents had been looking for evidence of a significant gambling relationship between these two men, that statement would certainly not have encouraged them.

Indeed, upon completion of the wiretap interceptions, the government in December 1971 applied for a warrant to search the homes of individuals who had been the original targets of the investigation and also a number of others whose involvement in the gambling operations was first uncovered by the wiretaps of October and November 1971. Significantly, no warrant was sought for the search of Chiarizio's home. Nor was he among those ultimately

indicted as a result of these wiretaps. United States v. Sapere, Crim. H-263 (D. Conn.).

The defendants also point to one other incident to demonstrate the government's alleged knowledge of a gambling relationship between Sapere and Chiarizio. In May 1972 Agents Ludwig and Santacroce approached Chiarizio at a local restaurant and attempted to secure his agreement to testify against Sapere and others in the case being prepared for presentation to the grand jury. Neither agent, at the evidentiary hearing, was able to recall precisely the contents of that conversation. Basically, however, they attempted to "con" Chiarizio by suggesting that he might be indicted if he did not cooperate with the government.

The defendants try to use this incident to demonstrate that the FBI was well aware of an ongoing relationship between these two men, and, in fact, had hard evidence to substantiate that link. Such an inference, however, is not supported by the record. First, Agent Ludwig testified that Chiarizio was only one of approximately thirty individuals whose testimony the government sought to "induce." Secondly, Chiarizio refused to testify and yet suffered no adverse consequences. It would be reasonable to assume that if the government actually had such hard evidence of a link between them it would have indicted Chiarizio along with the others whose involvement with the Saperes was uncovered in the course

of the October and November 1971 wiretaps.

This recitation really presents all the facts upon which the defendants' case is predicated. At the evidentiary hearing, they attempted through various witnesses to prove that Agent Santacroce must have had more information regarding a gambling relationship between Sapere and Chiarizio on March 22, 1973, the date on which he submitted his affidavit in support of the application for the Chiarizio wiretap, than he was willing to admit. Continually, however, they were rebuffed in their efforts by flat denials from various federal and state law enforcement agents whom they had called as witnesses. Thus, for example, Agent Stiles, the person who maintained the closest contact with Source 1, testified that he had no recollection of any information of a lay-off relationship between Chiarizio and Sapere provided by Source 1 after December 1971. (Footnote omitted). The defendants were also unable to establish the existence of a cross-reference system in the FBI files which would directly link Chiarizio to Sapere. The defendants were just unable to prove that Agent Santacroce in March 1973 was conscious of the relationship in question. In fact, he emphatically stated:

"In March of 1973 I had no reason, no knowledge of any connection between Chiarizio and Sapere when I prepared that affidavit." Transcript of Hearing, September 10, 1974 at 167.

It is quite clear when measured against the legal

standard to be applied in such cases, that the defendants have not established a factual record entitling them to the suppression of the wiretap evidence. In United States v. Kahn, 415 U.S. 143 (1974) the Supreme Court established the standard for testing the sufficiency of a wiretap application under Section 2518(1)(b)(iv). In that case the government had secured authorization to " 'intercept wire communications of Irving Kahn and others as yet unknown.' " 415 U.S. at 147. In the course of the wiretap, however, they intercepted a conversation between Minnie Kahn, Irving's wife, and a known gambling figure with whom she discussed various kinds of gambling information. The evidence secured by the wiretap led to the indictment of both Irving and Minnie Kahn for gambling violations under 18 U.S.C. Section 1952 (1970).

The district court granted Minnie Kahn's motion to suppress the conversations in which she had participated.^{14/} The Seventh Circuit affirmed the trial court's ruling, holding that the term "others as yet unknown" could not include persons whom the government through careful investigation could have discovered were likely to be using the wiretapped facilities for illegal purposes. United States v. Kahn, 471 F. 2d 191 (1972), rev'd, 415 U.S. 143 (1974).

The Supreme Court, however, took a much narrower view of the burden which Section 2518(1)(b)(iv) imposes upon law

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See note 10, supra

enforcement officials. It rejected the Seventh Circuit's standard of "discoverability," and chose instead to read the requirements of the statute literally:

"We conclude, therefore, that Title III requires the naming of a person in the application or interception order only when the law enforcement authorities have probable cause to believe that that individual is 'committing the offense' for which the wiretap is sought. Since it is undisputed that the Government had no reason to suspect Minnie Kahn of complicity in the gambling business before the wire interceptions here began, it follows that under the statute she was among the class of persons 'as yet unknown' covered by Judge Campbell's order."

415 U.S. at 155.

The defendants argue that Kahn is distinguishable from the instant case. Unlike Minnie Kahn whose criminal use of the wiretapped facilities was not known at the time of the application, Emil Sapere, the defendants assert, was a gambling figure whose ties to Michael Chiarizio were sufficiently well known to the government to require naming him in the application for wiretap authorization.

The defendants' argument is implicitly two-pronged and in the alternative. First, they suggest that Agent Santacroce was less than truthful when he asserted, as quoted above, that on March 22, 1973 he had no knowledge of any connection between Sapere and Chiarizio and thus lacked probable cause to believe that Sapere was violating 18 U.S.C. Section 1955 in conjunction with Chiarizio or that his communications would be intercepted over Mrs. Rubera's

telephone. They are thus essentially asserting that Santacroce made a willful misrepresentation to the court in his March 22, 1973 affidavit. This is the necessary implication of such a claim because under Section 2518(1)(b) (iv) the affiant has an affirmative obligation to report to the court the names of all persons who fall within the provisions of that section. Thus, an application for wiretap authority is a representation to the court that the government does not have probable cause to believe that any persons other than those named in the application are committing the offense and are likely to be intercepted in the course of the proposed wiretap.

The burden of demonstrating such misrepresentation is heavy. Cf. United States v. Marihart, 492 F. 2d 897 (8th Cir. 1974); United States v. Carmichael, 489 F. 2d 983 (7th Cir. 1973) (en banc). The defendants have come nowhere near satisfying that burden. At the very most they have proven that Santacroce had read Agent Ludwig's affidavit in support of the 1971 series of wiretaps at or near the time it was drafted. In addition, Santacroce in May 1972 joined Ludwig in attempting to "con" Chiarizio into testifying against Sapere. However, as discussed above, that incident by itself does not prove that either Ludwig or Santacroce at that time had probable cause to believe that a gambling relationship existed between the two men. Finally, Santacroce had every reason to disclose in his

affidavit the involvement of as many persons as possible in the gambling operation. This is because the investigation was focusing upon violations of 18 U.S.C. Section 1955 which requires the involvement of five or more persons. (Footnote omitted). Indeed, Santacroce's good faith is demonstrated by the fact that in his affidavit in support of the second series of wiretaps in May 1973, he did name Emil Sapere, whose conversations had by then been intercepted in the Chiarizio tap, and disclosed to the court the prior application for authority to tap Sapere's telephone of November 1971 as required by 18 U.S.C. Section 2518(1)(e).

Thus, this court finds highly credible Santacroce's assertion that as of March 22, 1973 he knew nothing of the Sapere-Chiarizio connection, or at the very least did not have probable cause to believe that Sapere's communications would be intercepted during the proposed Chiarizio tap.

Alternatively, the defendants suggest that even if Agent Santacroce did not personally have such knowledge, he was obliged to investigate the FBI files and inquire of other agents to determine if they knew of other persons whose conversations were likely to be intercepted during the proposed tap. This is a difficult issue, but one which I need not reach. (Footnote omitted). Even assuming that he had such an obligation, the defendants have failed to demonstrate that the law enforcement officials collectively possessed information that would provide them with probable

cause to believe that Sapere was committing the offense under investigation in March 1973 or that his communications would be intercepted in the course of the proposed wiretap.

Any information which the government possessed regarding a Chiarizio-Sapere link was approximately fifteen months old by March 1973. Even when fresh, that information was weak and had not even provided grounds for indicting Chiarizio with the Saperes. In view of the passage of a considerable period of time, and the indictment of Sapere, the stale information could not establish probable cause.

As noted by the Sixth Circuit recently: "The term 'as yet unknown' may properly be applied to persons whose identity is known, but who the government has no probable cause to believe are involved in illegal use of communication facilities." United States v. Martinez, ____ F. 2d ___, ___ (1974). See United States v. Curreri, supra. (Footnote omitted). That statement is certainly applicable here where the government, although generally aware of Sapere's past gambling activities, did not have probable cause to believe either that a gambling relationship existed between Chiarizio and Sapere or a fortiori that Sapere's communications were likely to be intercepted during the Chiarizio tap. The government was not derelict in failing to name Sapere in its March 22 application for wiretap authorization.

C. Compliance with Section 2518(1)(e)

The defendants further argue that the government had an affirmative obligation under 18 U.S.C. Section 2518(1)(e) (Footnote omitted) to disclose to the court the fact the conversations in which Michael Chiarizio was involved had been intercepted in the course of the November 1971 wiretaps on Emil Sapere's telephone. The government, as noted earlier, denies that it was aware that the "Matt" or "Mike" who participated in those conversations was Chiarizio.

Assuming arguendo that the government knew Chiarizio to be the other party to those conversations, it is quite clear that Section 2518(1)(e) does not require disclosure of all conversations intercepted during the course of prior interceptions, but rather only facts regarding "previous applications known to the individual authorizing and making the application." (Footnote omitted) (Emphasis added.) This point was well discussed and the rationale for the distinction between applications and interceptions was articulated in United States v. Bellosi, supra, a case in which the United States Court of Appeals for the District of Columbia strictly interpreted the requirements of Section 2518(1)(e) and ordered the suppression of the wiretap evidence involved in that prosecution. The court stated:

"Congress may have required disclosure of all previous applications, instead of all prior

interceptions, to avoid unduly burdening the Government and to avoid an ambiguity which inheres in the latter word and which is not clearly resolved by its use elsewhere in the statute. Wire interceptions could refer to continuing wiretaps on particular telephones for particular periods of time; however, the term could also refer to individual intercepted telephone conversations. If the word interception had been used in Section 2518(1) (e) and if it were given the latter interpretation, the Government would have had the substantial burden of informing the judge from whom an authorization was sought of each individual conversation which had been previously intercepted using the same facilities or places or involving the same persons; for example, there were apparently several hundred conversations intercepted by the Jet Liquor Store wiretap. Such disclosure in many cases is unnecessary. Given the judge's supplemental inquiry power under Section 2518(2), in cases where the judge finds that additional information concerning prior applications is needed to act on the pending one, he can order the Government to produce it." 501 F. 2d at 839, n. 13 (emphasis in original).

There is no merit in this argument of the defendants.

D. Compliance with Section 2518(1)(c)

The defendants finally argue that the Chiarizio tap of March 22, 1973 was unnecessary because the government had already obtained sufficient evidence of the gambling operations under investigation from the February 1973 wiretap of the telephone of Joseph Telesca. Thus, they claim, the Chiarizio tap violated the intent and spirit of Title III, one of whose goals is the minimization of the use of wiretapping. The letter of the statute was allegedly violated

by the government's failure to provide the court with "a full and complete statement as to whether or not other investigative procedures have been tried and failed" 18 U.S.C. Section 2518(1)(c). That provision could only have been satisfied in this case, they assert, by providing the court with a fully detailed report of the results of the Telesca tap, so that the court could then make an independent determination of the need for the proposed Chiarizio tap.

There is little merit in this claim. A reading of Agent Santacroce's affidavit reveals a reasonably detailed account of the evidence obtained from the Telesca tap of Michael Chiarizio's gambling activities. The affidavit contains the verbatim transcripts of several conversations between Chiarizio and Telesca which illustrate that Chiarizio was taking lay-off bets from Telesca and was supplying him with "sports line" information. There was no apparent effort made to withhold from the court the nature of the evidence derived from the Telesca tap. The government's application and affidavits amply complied with the requirements of Section 2518(1)(c). If the court had wanted further information before authorizing the tap, it could have "require[d] the applicant to furnish additional testimony or documentary evidence in support of the application." 18 U.S.C. Section 2518(2). This court felt at the time and still believes that such additional information was unnecessary.

Of course, a finding of the government's compliance with Section 2518(1)(c) does not completely dispose of the defendants' contention. They also argue that the court acted improperly in authorizing the Chiarizio wiretap because it was unnecessary in light of the evidence secured from the Telesca tap. Agent Santacroce stated in his March 22 affidavit:

"This application for the purposes of interception of wire communications is being submitted to fully determine the extent of the gambling operation that was uncovered during the wire communications intercepted over telephone number 203-754-3506 being utilized by Joseph Telesca." Affidavit of Agent Dewey Santacroce, 23 at 11.

In that affidavit, Santacroce informed the court of evidence suggesting probable cause to believe that Jay Schaefer and Angelo DeSena were involved in gambling activities with Michael Chiarizio and that their conversations would probably be intercepted during the course of the proposed tap. Conversations of neither of these men were intercepted during the Telesca tap, although Telesca unsuccessfully attempted to call DeSena. This court confirms its earlier judgment and holds that the Chiarizio tap was properly authorized, see 18 U.S.C. Section 2518(3), to fully expose the extent and nature of the gambling operation under investigation and to provide the government with evidence of the involvement of individuals whose conversations had not been intercepted during the Telesca tap. See United States v. Carubia, 377 F. Supp. 1099, 1103 (E.D. N.Y. 1974); cf. United States v.

Mainello, 345 F. Supp. 863, 873 (E.D. N.Y. 1972); United States v. Focarile, 340 F. Supp. 1033, 1050 (D. Md. 1972),
aff'd sub nom United States v. Giordano, 473 F. 2d 906 (1973),
aff'd, 40 L. Ed. 2d 341 (1974).

Accordingly, the defendants' motions to dismiss the indictment and to suppress evidence are denied.

SO ORDERED.

Dated at Hartford, Connecticut, this 21st day of January, 1975.

/s/ M. Joseph Blumenfeld
M. Joseph Blumenfeld
United States District Judge

NOTICE OF APPEAL

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA :
VS. : CRIMINAL NO. H-74-51
MICHAEL CHIARIZIO, ET AL :

NOTICE OF APPEAL

Notice is hereby given that Michael Chiarizio, Defendant

above-named, hereby appeals to the United States Court of Appeals for the Second Circuit, from the final judgment entered in this action on the 16th day of June 1975.

Dated at Hartford, Connecticut, this 16th day of June, 1975.

DEFENDANT, MICHAEL CHIARIZIO

By /s/ Maxwell Heiman
Maxwell Heiman
Furey, Donovan & Heiman, P.C.
His Attorneys

CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of June, 1975, I served a copy of the foregoing Notice of Appeal by depositing the same in the United States mail, postage prepaid, addressed as follows: Paul E. Coffey, Esq., Special Attorney, 450 Main Street, Hartford, Connecticut, J. Patrick Dwyer, Esq., 428 Burnside Avenue, East Hartford, Connecticut, Jack Daniel, Esq., 418 8th Street, Huntington, West Virginia.

/s/ Maxwell Heiman
Maxwell Heiman
Furey, Donovan & Heiman, P.C.
43 Bellevue Avenue
Bristol, Connecticut 06010

EXCERPT OF VOIR DIRE OF PROSPECTIVE JURORS

[VOIR DIRE]

[Tr. pp. 3-5]

THE COURT: Now, do any one of you know Michael

Chiarizio? That's spelled C-h-i-a-r-i-z-i-o.

Yes sir?

MR. CONROY: My name is Delbert Conroy.

I have met the gentleman in the past. I'm not a personal friend of his, but I have met him. Not in the business he's in, though.

MR. HEIMAN: Well now, if your Honor please, may I approach the bench?

THE COURT: What's that?

MR. HEIMAN: I say may I approach the bench?

THE COURT: Yes.

(Discussion at the bench:)

MR. HEIMAN: Now, if the Court please, I'm going to ask your Honor to excuse the whole jury panel.

That may have been a very funny remark, but it was certainly detrimental.

THE COURT: What did he say?

(Read Back)

MR. HEIMAN: Now, if your Honor please, that works certainly a detriment to my client, a comment like that.

MR. DANIELS: May I add one comment there, Judge?

That I believe that it would have a cumulative effect with the statement made by the first juror who was excused on the grounds that he was formerly a compulsive gambler, and he made this statement in the presence of the panel; and that to quote him practically

or the gist of it, that before the case got --

THE COURT: Don't you want me to get into the question of a possible prejudicial interest here?

You don't want me to ask these questions?

MR. DANIELS: Oh, no. I appreciate very much your asking the questions.

But the juror, the first one who was excused--

THE COURT: Yes, I know.

MR. DANIELS: -- made this statement that before the trial was over he would probably be telling us all about it - thus implying that the situation exists.

THE COURT: Well, we lost a good juror; he knows the business.

Motion denied.

Now let's get down to business here.

(In open Court:)

THE COURT: All right.

You are excused, Mr. Conroy.

MR. COFFEY: May I have that name again, please?

THE COURT: Conroy. Number 14.

* * *

EXCERPT FROM TRIAL TRANSCRIPT, APRIL 16, 1975
(In the absence of the jury)

[Tr. pp. 203-210]

THE COURT: Without the underlying support, just an estimate as to how much longer you are going to take.

MR. COFFEY: At best I can tell the Court that it would be my estimate that we will conclude in another four or five days, at the most.

I say that because I have reason to believe that the Government and defense counsel are not going to be able to agree and to stipulate as to the accuracy of the transcripts. If that is so, I'll make a certain proffer while we should be able to proceed, without having to fight over every word in the transcripts.

If the Court does not accept the Government's position, then under the Bryant case, if the Court accepts Mr. Heiman's analysis of that case, we may have to play every conversation that the Government wishes to play to the jury outside the presence of the jury, to the Court first, for the Court to determine its audibility and admissibility.

THE COURT: You must be kidding.

MR. COFFEY: Well, I don't want to do it, your Honor, and I don't think Mr. Heiman wants to tie up the Court either. But he may feel that he has certain grounds before certain evidence is admissible.

THE COURT: What makes you feel that way, Mr. Heiman?

MR. HEIMAN: If your Honor please, I have no feelings at all except with respect to transcripts.

I submit, if the Court please, that if the Government is going to make a bootstrap operation out of offering both the transcripts and the tape, then according to Bryant and I

think according to cases under that - and I'll be glad to give them to your Honor, I have them - that in order for them to be admissible, the transcripts themselves to be admissible, one of two sets of circumstances must exist:

One, the parties must be able to stipulate as to the accuracy of the transcripts with respect to the tape and, two, if they can't stipulate and the Court feels that he wants the jury to have both the transcript and the tapes, then the Court must make the determination in the absence of agreement by counsel.

I think that's what the Second Circuit has said.

THE COURT: You think so.

MR. HEIMAN: Now, we can circumvent this very easily.

THE COURT: Yes?

MR. HEIMAN: All we have to do is have the tapes played once for the jury, not put the transcripts in evidence, and we're not going to have a problem.

If Mr. Coffey is going to want to go both ways, then we're going to have a problem at that point, your Honor.

THE COURT: We're not going to have a problem in the courtroom.

You may have a problem --

MR. HEIMAN: Your Honor, all I want to do --

THE COURT: Just a minute, just a minute.

MR. HEIMAN: I'm sorry, your Honor.

THE COURT: How long have you had the tapes available

to you?

MR. HEIMAN: The tapes have been available, if your Honor please, for a year.

THE COURT: How long have the transcripts been available to you?

MR. HEIMAN: I've been through the transcripts very carefully.

THE COURT: Then if there's any question about the accuracy of the transcripts as compared to what's on the tapes, you've had ample opportunity to determine whether or not they are accurate.

Now just let me finish.

MR. HEIMAN: I certainly will, your Honor.

THE COURT: And if you insist upon having these transcripts checked for accuracy against the tape, it will be only after you yourself listen to the tape and make this analysis of whether there is anything incorrect about the transcript and then point out specifically to the Court what portions you think are inaccurate.

If you think you're going to get the Court to sit here and listen to this stuff for a couple of days, when you've had a year to do it, you're mistaken.

MR. HEIMAN: If your Honor please, I respectfully submit to the Court that I understand the practical difficulty.

I also respectfully submit to the Court that that is not the law in this Circuit.

THE COURT: That's the law in this case.

MR. HEIMAN: It may well be.

THE COURT: That's the law in this case and we're not going to just spend a couple of days listening and making comparisons in open court.

You've had an opportunity to do so for a year and if there is any question about their accuracy you should be able now to tell the Court just where that question lies.

If you want, you'll have the weekend in which to have those tapes available to you and a place in which you can make your analysis of the tapes against the transcripts.

Is that correct?

MR. COFFEY: Yes.

And I think the Court is exercising its discretion. It's a well-exercised discretion for this reason: In addition to supplying the transcript --

THE COURT: Well, I'm glad for that support.

MR. COFFEY: I think I want to put on the record, your Honor, so there will be a basis for the Court making that ruling, which I think is a good ruling.

In addition to supplying the transcripts, in addition to supplying the tapes and telling counsel and defendants a year ago that they could come in and listen to it, the Government also supplied to each defense counsel quite a while ago a summary of each conversation the Government is of the opinion pertains to each defendant.

So that it is narrowed down considerably as to their analysis of what conversations involved their defendant.

I think at this point the defense is in a poor position to say let's play each conversation.

THE COURT: All right. Well, that's the situation.

MR. HEIMAN: Well, may I just be heard for one further thing, so that the record is clear, and that's this:

That Mr. Coffey proposes to do a number of things. One, he intends to synthesize the tapes. That is, he intends to take conversations and play only specific and limited conversations to the jury, which I submit, if the Court please, breaks the continuity of these tapes.

We don't know what else is in these tapes.

THE COURT: Well, we will see the form of his submission and what he offers to support it.

MR. HEIMAN: That's why I would respectfully ask your Honor not to make a ruling until such time as there is a proffer of proof.

When there is an offer of proof then obviously your Honor is going to be able to rule, after having heard all of the arguments and the discussion. But right now there's nothing before the Court.

THE COURT: Insofar as there is a suggestion that the Court will be required to make a test of the accuracy of the transcript as against the tapes, there is enough before the Court for the ruling to the extent to which it has gone.

To the extent to which summaries may be offered, I can assure you now that if there is a basis in the evidence for the summaries and there is testimony with respect to the nature and extent of those summaries, there may be a basis for the Court to rule to admit the summaries as well.

We will see what that situation develops into. But just don't take the position that this can be made a place to play games and drag out a case for days and days because of something that you've read in a case in the Second Circuit.

MR. HEIMAN: As long as your Honor understands the arguments - and I'm sure your Honor does - I'll live with the ruling.

THE COURT: I am not trying to anticipate what your argument is going to be, but I've given you fair warning so you can anticipate what the ruling of the Court is going to be, at least in part.

We will adjourn till tomorrow morning at ten o'clock.

(Whereupon, court was adjourned.)

* * *

GARY E. MC WHORTER, called as a witness on behalf of the Government, being first duly sworn, was examined, and testified in part as follows:

[Tr. pp. 328-329]

DIRECT EXAMINATION BY MR. COFFEY:

* * *

Q I show you Exhibit No. 44 for identification and ask you to take out its contents and indicate if you recognize

that exhibit?

A Yes, I do.

Q Without telling us what's contained therein, what is it?

A It's a cassette tape recording with 45 minutes per each side recording time.

Q Is there anything recorded on that tape?

A Yes, there is. It's marked the date 2/26/74, Phone, which would indicate it was connected to the telephone, Tape No. 1, again Phone beside it, my initials and the initials of Agent Puckett.

* * *

[Tr. pp. 338-343]

VOIR DIRE EXAMINATION BY MR. HEIMAN:

Q Mr. McWhorter, what happened to those tapes after you finished taking the exemplars?

A Agent Puckett took the tapes and made copies. And then the tapes were placed in an exhibit envelope and placed in the Exhibit Room at the New Haven Office.

Q Who took the tapes to New Haven? Did you take them?

A From here on the 26th?

Q Yes.

A Yes, Agent Puckett and I took them back.

Q Did you put them in envelopes?

A No, I didn't.

Q Do you know after -- did you take them to the Exhibit

Room in New Haven?

A No, I didn't.

Q In other words, once you got to New Haven with them you had nothing further to do with them?

A That's correct.

Q They were taken into custody and safekeeping by someone else, if in fact they were, is that correct?

A That's correct.

THE COURT: Well, who were they given to?

THE WITNESS: Agent Puckett.

THE COURT: He took them?

THE WITNESS: Yes sir, he took the tapes.

THE COURT: All right.

MR. HEIMAN: Thank you, your Honor. That's all I have.

MR. DANIELS: No questions. Except, of course, we object to their introduction as exhibits at this time in that their integrity has not been established.

* * *

BY MR. COFFEY:

Q All right. To your knowledge, have the voice exemplars been out of the custody or control of the FBI during the period that you first took them till today?

MR. HEIMAN: Well, now, if your Honor please, the only way he could know that is from what someone else told him.

THE COURT: The question is to his knowledge.

MR. HEIMAN: All right.

The objection will stand, your Honor.

Q To your knowledge.

A No.

Q No what?

A They haven't been out of the control of the FBI during that period.

THE COURT: To your knowledge.

THE WITNESS: To my knowledge.

Q Do you know where they were placed in New Haven, in the New Haven office?

MR. HEIMAN: Again, if the Court please --

Q To your knowledge.

A We have what we call the Bulky Exhibit room. The envelopes were placed in file-type folders and placed in file cabinets -- that were marked as exhibits and placed in file cabinets.

Q Is this a secured area within the FBI offices in New Haven?

A Yes, it is. It's locked.

MR. COFFEY: I would offer them, your Honor.

MR. HEIMAN: May I inquire now, if the Court please, in response to Mr. Coffey?

THE COURT: Right.

BY MR. HEIMAN:

Q You didn't put those documents, those tapes, into the

room, is that correct?

A That's correct.

Q The last time you saw them Mr. Puckett had them?

A That is correct.

Q And that was back in April of 1974, is that correct?

A That's correct.

Q Except for the ones that were taken in February,
and that was in February of 1974?

A That is correct.

Q And the only basis of knowledge that you have as to
where they were placed or how they were placed was what
someone else told you, is that correct?

A It's the general procedure for handling evidence.

Q I understand that.

But you have no direct personal knowledge of that
yourself, do you, with respect to --

A No, I don't.

Q -- these specific things. Isn't that correct?

A That's correct.

Q The only way you know it is there is a general
procedure, is that correct?

A That's correct.

Q But whether or not the general procedure was followed
or not, you are not personally familiar with in this
instance, are you?

A I know that I personally took some out of the Bulky

Exhibit to bring here, so I know they were there.

Q Some of them?

A Right.

Q But what happened to them between the time that you last saw them and now, you don't know?

A No.

MR. HEIMAN: I'll continue to renew my objection, if your Honor please.

THE COURT: Overruled. Admitted.

MR. DWYER: If your Honor please, for the purposes of the record, we also object on behalf of Morton White, to their admissibility.

THE COURT: Very well.

MR. DANIELS: Let the record show Cecil Johnson objects too, your Honor.

THE COURT: Very well.

THE CLERK: Exhibits 44 through 49, your Honor?

THE COURT: Strike the identification.

I didn't keep a record of the number.

(Government Exhibits 44 through 49 for identification: marked full exhibits.)

* * *

[Tr. pp. 353-356]

CROSS-EXAMINATION BY MR. DANIELS:

Q And did you, yourself, take these tapes out after the exemplars were run?

A Yes, sir. We removed them, took them back to New Haven.

Q So you and Agent Puckett sort of had joint custody of them for a while?

A That's correct.

Q And then you together went to New Haven?

A That's correct.

Q And then Mr. Puckett took all of the tapes and you didn't see him again for a while?

A I didn't see the tapes again, no sir.

Q You didn't see the tapes again until when, today or --

A The tapes of the twenty-six, today.

I brought up the tapes taken on April the 3rd and 4th when I came up on Monday.

Q Well, then you reviewed the tapes today, is that correct?

A The tape taken the 22nd, I listened to the first two exemplars because of the quality of the recording.

Q And you hadn't heard them in the past what, year and month or so, thirteen or fourteen months since you had taken it?

A That's correct.

Q But you say according to your recollection that is what was done on February 26th?

A Yes, sir.

Q According to your recollection?

A Yes, sir.

* * *

CROSS-EXAMINATION BY MR. DWYER:

Q I'm a little curious. These exemplars were taken here in Hartford, were they not?

A Yes, the ones on the 26th of February.

Q Why weren't they left here in Hartford?

A We took custody of the tapes to take them back and make a working copy, or duplicates.

Q I don't think that's responsive.

Why were they taken back to New Haven rather than left here in Hartford?

MR. COFFEY: Your Honor, he just gave his reason; to make duplicates.

MR. DWYER: I'm sorry, your Honor. If that's --

THE COURT: I mean the implication is that the duplicates had to be made in New Haven.

Is that right?

THE WITNESS: We have the equipment to duplicate the tapes there.

THE COURT: Yes.

Q. (By Mr. Dwyer) But not here?

A We would have had to brought equipment here to do it.

Q So in terms of expediency it was easier to bring the originals back and make dupes at that point?

A That's right.

Q Where were the duplicates brought?

A The duplicates were sent up to Agent Santacroce.

Q By mail?

A I don't know if it was by mail or someone coming from Hartford brought them.

Q Have you ever listened to the duplicates?

A No, I have not.

MR. DWYER: No further questions, your Honor.

THE COURT: All right, Mr. McWhorter, you can step down.

(Witness excused.)

* * *

DEWEY L. SANTACROCE, called as a witness on behalf of the Government, being first duly sworn, was examined, and testified in part as follows:

[Tr. pp. 359; 362-368]

DIRECT EXAMINATION BY MR. COFFEY:

* * *

Q As a result of the swearing of that affidavit were wire interceptions authorized over 247-5976?

A Yes sir, they were.

* * *

Q All right. Were you at the monitoring site at the beginning of every day, every monitoring day?

A Yes, sir.

Q Were you at the monitoring site at the close of

every monitoring day?

A Yes, sir.

Q Have you had occasion to listen to each and every telephone call which was recorded, monitored and recorded during the entire period?

A I did.

Q Were all wire interceptions either recorded by you or recorded under your direction during the monitoring period?

A They were.

Q At the end of the day what was done with the actual tape recordings which contained recorded conversations made during that day?

A The tapes were --

Let me put it this way: On the first day we took the tapes back to our office here and we made a copy of the tape. The original tape was then placed in our vault.

On the second day and days thereafter we made copies of the tapes at the plant where we were intercepting the communications. The original tape was then brought back each evening and placed in the vault here in our office in Hartford.

Q All right. At the end of the monitoring period in April of 1973, what happened to these tapes? What did you do with them?

A The tapes were -- the original tapes were brought

before this Court, Judge Blumenfeld, and they were sealed by the Judge and returned to the custody of the FBI.

They were then taken by me to New Haven, Connecticut and placed in our locked Bulky Exhibit Room.

Q And have those tapes remained sealed pursuant to the law since that date?

A They have.

Q And they are sealed today?

A Yes.

Q In court today?

A Yes, sir.

Q In your possession?

A Yes, sir.

Q Would you please take them out of the box. And I ask the Court's permission pursuant to the law to break the seal.

A They're all here.

Q Agent Santacroce, I notice that you have a number of envelopes in your hand. You've just opened up a box. Were the tapes, the entire tapes for a particular day placed in an envelope?

A Yes, sir.

Q Do you have an envelope for each day?

A I do.

MR. COFFEY: I'm sure, your Honor, we can mark them at the recess.

THE COURT: Now?

MR. COFFEY: No. We can go forward.

THE COURT: Okay.

Q Can you determine if all the recording are there,
Agent Santacroce?

A Yes sir, they are.

Q All right. Now, just stick them in that box for
the time being, will you?

Please describe for the jury how a wiretap actually
works as you conducted it in this case when an incoming or
outgoing call is made to or from the subject telephone.

What actually happens?

A Well, let me explain the physical set up.

We would have a table. On top of the table would
be a tape recorder and the Dialed Number Recorder. And the
tape recorder is for the purpose of taking the telephone
conversation coming over the line. The Dialed Number Recorder
is for the purpose of telling us what number is dialed.

In addition --

THE COURT: By whom? By what?

THE WITNESS: By the telephone number 247-5976.

Q (By Mr. Coffey) If it's an outgoing call?

A If it's an outgoing call.

THE COURT: All right.

A The Dialed Number Recorder will only record outgoing
calls. It does not record the number of calls coming in or

what the number of the call is coming in.

However, when an incoming call comes in a blue light goes on on the Dialed Number Recorder, which is an indication to the agent that an incoming call is coming, which allows him at this point to immediately start the tape recorder so he will get the entire thing.

Now the agent who records the conversation on the tape recorder coming from the intercepted calls maintains a log. In this log he must indicate the time that the interception was commenced and a brief summary of that call.

At the end of the day he indicates the time the interceptions were terminated. And he puts his name on each page and his initial beside each call that he happened to be on duty at the time it was made.

Now, when the individuals who were using telephone number 247-5976 made an outgoing call the pen register would immediately type out the time, the date, the number that was called, and at the conclusion of the call it would indicate the time and date again that the call was concluded.

The agent -- we would have two agents handling this: One agent with the tape recorder, who would make the log as to the calls going out; the other agent handling the Dialed Number Recorder, who would write down the number of outgoing calls - like outgoing call No. 1, he would write down the number that was called and he would put his initials beside it.

Now, also on the small piece of tape that was going to the machine typing out the particular digits, when that concluded the agent would put the number of the call there - for instance, No. 3- with his initials. At the end of the day this tape would then be retained along with the original tape. And that is what is contained in each one of these envelopes.

Q Now, Agent Santacroce, do you have with you today the original paper printouts of what I referred to as pen register results for all outgoing calls during the interceptions over telephone 247-5976 in March and the beginning of April, 1973?

A Yes, sir.

Q Are those records in the condition that they were in at the time they were originally made by the machine on the days in question?

A Yes, sir.

Q Now, do you also have with you copies, the original copies of the agents' logs which they kept during the monitoring days?

A I do.

Q Did you take personal responsibility to ensure that both you and the agents under your direction scrupulously followed the procedure for identifying both the tapes, the logs and the pen register results in each day?

A Yes, sir.

Q And are those instructions followed?

A Yes, sir.

* * *

[Tr. pp. 369-370]

Q All right. Now, I think I asked you this before, Agent Santacroce, but have you listened to every recording made during that period by you and your fellow agents?

A I have.

Q Have you supervised the preparation of transcripts of all of the monitored and recorded calls?

A Yes, sir.

Q Do you have that set of transcripts with you today?

A Yes, sir.

Q Would you please just take it out of the box.

Do you have it in front of you at this time?

A Yes, sir.

Q Now, have you had an occasion to compare the transcripts against each call to determine the accuracy and fairness of those transcripts?

A I have.

Q Have you compared each individual transcript for each call with each individual call?

A Yes, sir.

Q Are the transcripts in front of you a fair and accurate representation of what is contained on the calls?

A Yes, sir.

MR. COFFEY: Again, your Honor, it will save a lot of time if we mark these documents at the recess.

* * *

[Tr. pp. 373-379]

Q Now, before I ask you the results of that comparison that you named, that you mentioned, I want to ask you if you were on duty on May 8th, 1973?

A I was.

Q Did you have occasion to again be in any court proceeding similar to the one you were at on March 22nd, 1973 in the Federal Building here in Hartford?

A Yes, sir.

* * *

Q As a result of your participation in that court proceeding was a Court Order issued by the Court authorizing wire interceptions?

A It was.

Q Over what telephones, please, sir?

A Over telephone number 223-3117 and 828-5713.

Q Now, let me ask you this: Do you have a numerical designation which you gave to the wire interceptions in March of 1973?

A Yes, sir.

Q What number was designated for those interceptions?

A The number that was designated for the interceptions over telephone number 247-5976 was USDCT #25.

Q What number was assigned to the interceptions over the DeSena telephone?

A USDCT #26.

Q And the Schaefer phone?

A USDCT #27.

Q As a result of the Court order did you, in fact, conduct wire interceptions over 3117 and 5713?

A Yes, sir.

* * *

Q Were your instructions to the agents the same as previously given in March?

A Yes, sir.

Q When each monitoring day ended was the same procedure used for the sealing of the tapes and the preservation of the logs and the pen register readouts?

A After the tapes were dubbed the original was then placed in a secure spot in our office here in Hartford.

Q Did you attempt to determine -- did you, in fact, determine if during the monitoring period the agents followed your instructions scrupulously with respect to the monitoring of conversations and the preservation of the evidence resulting therefrom?

A Yes, sir.

Q Were those instructions followed?

A They were.

Q Do you have the original sealed tape recordings for

USDC 26 and 27?

A Yes sir, I do.

Q Are they right next to you?

A Yes, sir.

Q Are they still under seal?

A Yes sir, they are; the two boxes here.

MR. COFFEY: May I have the Court's permission
to break the seal?

THE COURT: Yes. Break the seal.

THE WITNESS: I need a knife for this particular
type of tape.

Q Would you please examine the contents of the box
containing USDCT 26 to determine if all the original tapes
originally sealed are still contained in the box in which
they were sealed?

A Well, USPCT #26, they are.

And also for USDCT #27, they are.

* * *

Q Now, do you have with you in your possession the
original logs of the agents which were made which reflected
their monitoring during the monitoring days in USDCT 26 and
27?

A Yes, sir.

Q Do you also have with you the original of what I
again refer to as pen register results for USDCT 26 and 27
for those wire interceptions?

A The results?

Q Do you have the original pen register paper readouts?

A Yes sir, I do.

Q Are they in the same condition as when they were originally made by the machine on each monitoring day?

A Yes, sir.

Q Have there been any alteration, editing or change in either the original tapes, the logs or the paper readout pen register results of any of the documents which you've been describing here this afternoon?

A No, sir.

Q And have you examined all of the documents and tape recordings which I inquired of you this afternoon to determine if that, in fact, is correct?

A Yes, sir.

Q Now, have you had occasion to listen to all of the wire interceptions for USDC 26?

A I have.

Q Each conversation?

A Yes, sir.

Q Have you listened to each conversation for USDC 27?

A Yes, sir.

Q As a result of listening to those conversations have any transcripts been prepared under your supervision of those monitored interceptions?

A They have.

Q Do you have those transcripts with you today?

A Yes, sir. Prepared transcripts for No. 26 and transcripts for No. 27.

Q Now, have you compared the transcripts yourself against each conversation which was monitored to determine if the transcripts of each conversation is a fair and accurate representation of that conversation?

A Yes sir, I have.

* * *

[Tr. pp. 381-382]

Q Now, have you had an occasion to listen to the voice exemplar of Michael Chiarizio?

A Yes, sir.

Q Have you had occasion to listen to wire interceptions and compare conversations on USDC 25 against the voice exemplar of Mr. Chiarizio?

MR. HEIMAN: Yes or no, if the Court please.

A Yes.

THE COURT: Have you made a list of those?

THE WITNESS: Yes, sir.

Q (By Mr. Coffey) As a result of listening to the voice exemplar and listening to actually monitored calls on USDC 25 - first of all, yes or no, have you determined, have you reached a conclusion whether or not Michael Chiarizio was intercepted on USDC 25?

A Yes.

MR. COFFEY: You may inquire as to --

MR. HEIMAN: Does your Honor wish me to start now?

THE COURT: I want you to gather your inner resources together while we do the same.

* * *

[Tr. pp. 423-425]

Q Now, you've previously testified before we broke yesterday that you listened to the voice exemplar of Mr. Chiarizio, am I correct?

A Yes, sir.

Q During the interceptions over 247-5976 were there any gambling conversations of an individual using or answering to the name of Mickey?

A Yes, sir.

Q How many of the gambling conversations over 247-5976 involved this Mickey?

A All of them; 486.

Q Have you compared the voice of Mickey with the voice exemplar of Michael Chiarizio?

A Excuse me, sir. I misspoke.

You asked me how many of the gambling conversations. There were only 435 gambling conversations that involved Mr. Chiarizio.

THE COURT: Well, all the gambling conversations involved him?

THE WITNESS: Yes, sir.

THE COURT: All right.

Q Is Mickey Mr. Chiarizio?

MR. HEIMAN: Well, I'll object to that, if the Court please.

THE COURT: Out of what the witness describes as gambling?

MR. HEIMAN: No. He said "Is Mickey Mr. Chiarizio". To that I'll object.

THE COURT: I see.

MR. COFFEY: I'll rephrase it.

Q Have you compared the voice exemplar of Mr. Chiarizio with Mickey?

MR. HEIMAN: Yes or no, if the Court please.

A. Yes.

Q Have you reached a conclusion as to the identify of the voice belonging to Mickey?

MR. HEIMAN: Yes or no, if the Court please.

A Yes.

Q Who is Mickey?

MR. HEIMAN: Objection, if the Court please.

There is no showing that this witness has any great expertise or any basis upon which to form an opinion.

THE COURT: Overruled.

MR. HEIMAN: It's a question of fact for the jury and I, therefore, object.

THE COURT: Overruled.

Q Who is Mickey:

A Michael Chiarizio.

Q Do you see Mr. Chiarizio in court today?

A Yes, sir.

Q Point him out, please.

A. Mr. Chiarizio is sitting at the defense table
wearing a maroon suit.

* * *

[Tr. pp. 408-411; 413-419]

MR. HEIMAN: Now, if your Honor please, may
we inquire on the offer?

THE COURT: What's that?

MR. HEIMAN: I say Mr. Coffey has offered them.
May I inquire on the voir dire with respect to
their admissibility?

THE COURT: Let's see where it goes. Go ahead.

MR. HEIMAN: Thank you.

VOIR DIRE EXAMINATION BY MR. HEIMAN:

Q Mr. Santacroce, I think you told us when you
testified yesterday that these tapes were collected in some
manner after each day?

When I say "these tapes", I'm talking about the
original tapes now in each of the three boxes.

A Yes.

Q And did you collect them personally?

A Yes.

Q Every day?

A Yes.

Q All right. What happened to the tapes in each instance when you removed them from the machine? What did you do with them?

A In each instance when I took them from the machine, put them in the box and each instance -- well, all right:

The first instance on March the 22nd was late in the evening. I removed the tape from the machine, I took it back to the Hartford office of the FBI, I locked it in the vault.

The next day, the 23rd, we continued monitoring and at that time I prepared a duplicate of the tape for the first day.

Q Where was that done?

A That was done at the second floor at 1880 Broad Street where we intercepted.

Q Using the same machine that you had used previously to make the tape?

A No. We used two -- we had two other machines there to make the dubs.

Q In other words, you ran the tape that you had taken on the first day through the machine again to make a second tape, is that correct?

A As these two machines are set up over here on the

table (indicating), we put one tape on one machine, run it through a wire into a clean tape on the second machine, making sure that the input is proper and the recording level is proper, and that way you could record a new tape from the original tape.

Q And that's this Uher machine - U-h-e-r machine?

A Yes, sir. And then in the evening --

Q Excuse me.

What did you do after that with the original tape, the one that's now marked for identification?

A Put it back in the box, take it to the office upstairs, put it in the vault.

Q And was that done right after the dub was made?

A I would say that it wasn't done until I went home that evening.

THE COURT: The end of the day?

THE WITNESS: Yes. I wouldn't come back for a special trip to the office to put it in the vault. On the way home I'd put it in there.

Q (By Mr. Heiman) And this apartment that you were using at the plant at 1880 Broad Street --

A Yes.

Q -- was that a multi-room apartment?

A Yes.

Q It had more than one room?

A Yes. I think it had three rooms.

Q Did you keep the tapes or that particular tape, the 22nd tape, in the same room where the agents were monitoring the conversations?

A Always.

Q So that somebody constantly had it visible to them?

A All the work was done in one room; everything was there in that one room.

Q That machine that you used to duplicate the tapes, that Uher machine, does that have an ability to erase?

A It can erase if while you're running a tape through it you press down the automatic recording level and that will erase it.

Q Is that the only way it can be erased or can it be erased by accident?

A Well, of course, if you do that accidentally you erase it.

Q So it can happen, is that correct?

A Sure.

Q Now, was your procedure the same on subsequent days with the tapes, Mr. Santacroce?

A Yes sir, it was.

Q That is, the tapes were duplicated in the plant --

A Right.

Q -- at 1880 Broad and then they were brought back always by you -

A Yes.

Q -- and put in the vault here in the Federal Building?

A Right.

* * *

Q (By Mr. Heiran) Now when were those tapes sealed, that is, when were they finally put away in such a condition that when they were brought to the Judge for sealing that they were in envelopes and sealed in some manner that nobody had access to them?

And I'm talking about all three boxes now because I would like to try to take them all as a group, unless there's exceptions.

A Each day after I dubbed the tape I would take the tape --

THE COURT: By "dub" you mean make a copy or a duplicate?

THE WITNESS: Yes, make a copy.

A After I duplicated the tape I would take the tape and put it in an envelope, manila envelope which I had already stapled a white sheet to, a custody sheet. And I would put it in a box just like you have there in the bottom drawer in the vault upstairs, and I would leave it there.

Now, as each day went by I would add to it. And then on the final day --

Q Excuse me.

When you say you would add to it, you mean you would add more manila envelopes?

A Yes, sir.

Q All right.

A And then on the final day -- I should say the next day, they were taken down here to the Judge and --

Q And he officiated at the sealing of the boxes?

A Yes sir, right.

Q Now, when you put these tapes in the manila envelopes -- I just pick one at random, I'm looking at 57(a) for identification --

MR. COFFEY: I believe it is a full exhibit.

MR. HEIMAN: I don't think it is a full exhibit.

MR. COFFEY: I believe I asked to have them all made full exhibits.

MR. HEIMAN: And I asked for permission --

THE COURT: All right. Go ahead. Let's get over with it.

Q 57(a) for identification, the envelope is a gummed envelope, is it not?

A Yes, sir.

Q And it also has a clip fastener?

A Yes, sir.

Q Was that envelope sealed?

A No, sir.

Q In other words, anybody who went into the vault had access to that tape after it was put in that manila envelope?

A That's correct.

Q How many people have access to that vault?

A Only Special Agents of the FBI that are in that room.

Q Well, how many is that, Mr. Santacroce?

A Now there are twenty. At that time there were probably around fifteen, sixteen.

Q In other words, fifteen people, for whatever period of time those were in the vault in the case of each of the three exhibits, fifteen people at any time had access to any of those tapes that were in the vault, is that correct?

A That's correct.

Q They weren't sealed in any way?

A Couldn't seal them because the Judge had to look at them.

Q I understand that. But they were in an envelope which was not gummed, is that correct?

A That's correct.

Q Which was not sealed?

A Right.

Q They were in open boxes, or in --

A Right.

Q Not closed up, in any way?

THE COURT: Yes, yes. Go ahead.

Q Well, is that correct or isn't it?

A I already said that, yes.

Q And fifteen people had access to them?

A At least fifteen.

MR. HEIMAN: That's all.

VOIR DIRE EXAMINATION BY MR. DWYER:

Q Just a couple of questions, Mr. Santacroce. Were these tapes ever kept by you overnight?

A You mean at home?

Q Or at any place that you might happen to go.

A No. I always brought them back here to the office

Q Each and every day?

A Sure.

Q Now, did you listen to these originals prior to bringing it back to the vault each night?

A Sometimes I did.

Q And sometimes you didn't?

A Right. Some days if we had, for instance, two tapes - one tape would be off the machine and we'd have a clean tape on the machine, and I would have an opportunity to listen to that first tape. But the second tape I couldn't hear because it's still on the machine.

Q Well, have you listened to the originals of these tapes?

A Every one.

Q Well, when did you do this?

A At the time they were being dubbed or copied.

Q I thought you said you hadn't listened to the originals.

A You thought I said that I hadn't listened to the originals?

Q Did you listen to the original tapes each and every day after they were taken off?

A Every day, right.

Q I thought you just told us you hadn't.

A I didn't say that at all.

Q Did you just tell us that sometimes you listened to the tapes before they were duped?

A Yes, sure.

Q But before you came back to the vault each evening you made sure you listened to the original tape?

A No, not all the time. I couldn't.

As I'm trying to explain to you, that if we had a second tape on there for the day, by the time we finished it would be late in the evening. I might not listen to the tape that night. I'd bring it back to the vault.

Q And then sometime in the future you'd come back and listen to it?

A When I dubbed it I would listen to it.

THE COURT: That's the next day?

THE WITNESS: Sure.

THE COURT: Yes.

Q Was it always the next day?

A Not always, no.

MR. DWYER: No further questions.

MR. DANIELS: No questions, your Honor.

THE COURT: All right.

MR. HEIMAN: If your Honor please, on behalf
of the defendant Chiarizio --

I'm sorry, did you want to Redirect?

MR. COFFEY: No, no.

MR. HEIMAN: On behalf of the defendant Chiarizio
I'm going to object to the introduction into evidence
as full exhibits of Exhibits 54, 55, 57, 58, 60 and 61 on
the grounds that, first of all, the chain of custody is
not established because they were in an open envelope
or an unsealed envelope with fifteen people having
access to these tapes, stored in the vault for long
periods of time.

And I would object on the ground of the custody
chain and also, if the Court please, I would object
on the grounds set out in the Motion to Suppress
upon which the Court has ruled, just for the record.

THE COURT: Denied.

MR. DWYER: If your Honor pleases, may the same
objection be noted on behalf of the defendant Morton
White.

THE COURT: Same ruling.

MR. DWYER: For all exhibits.

THE COURT: Yes.

MR. DANIELS: And for Mr. Johnson.

THE COURT: Yes.

* * *

(In the absence of the jury)

[Tr. pp. 441-445]

MR. HEIMAN: May I ask one further question of Mr. Coffey through your Honor?

THE COURT: Yes, sir.

MR. HEIMAN: And that's this: Does he now intend to have Mr. Santacroce read excerpts that he's prepared from the tapes? Is that what I'm to understand?

MR. COFFEY: My procedure is to now show, with respect to the defendants who are not on trial, transcripts of conversations prepared by Agent Santacroce and ask him, for example, at 11:09 on March 23rd, 1973, was there a conversation between Defendant A and B? Yes. What did Defendant A say to Defendant B?

MR. DANIELS: I object to summarizing.

MR. COFFEY: Well, he could read the whole thing, if your Honor please.

MR. HEIMAN: Let me tell you the problem.

I went last night - and Mr. Santacroce was very accommodating, he stayed here until after eleven o'clock to assist me, and he and I ran through every single one of the summary tapes that Mr. Coffey had indicated to us he was going to introduce.

I did that for the purpose of determining the accuracy

of the transcripts, in accordance with the directions which your Honor gave to me Tuesday.

THE COURT: I didn't give you directions. I gave just a little warning.

MR. HEIMAN: Well, and I'm smart enough to take the warning of the Court.

THE COURT: All right.

MR. HEIMAN: I'm not a neophyte either.

THE COURT: I don't mean "warning" in a sense of adverse consequences.

MR. HEIMAN: I understand perfectly, your Honor.

THE COURT: It was just a preview of how the Court was likely to rule.

MR. HEIMAN: And I would say this: that Mr. Santacroce and I went through these tapes inch by inch. Some of them we replayed two or three times, in order to see if we couldn't do it.

I've started to make notes with respect to all of the conversations which I heard. And I tell the Court that while I have confidence in Mr. Santacroce's ability to hear, I have confidence in my own ability. Some of the material that's in there is totally inaudible. A great deal of it is garbled.

For example, there is a series of conversations allegedly between Chiarizio and Schaefer, I believe it is. It's "Jack" and "Mick", as I recall. Now, in each of those

conversations Mr. Santacroce has "Hello, Jack. Hello, Mick".

Now, one of those tapes I think we played four times. I could not hear "Mick". It just ran all together.

Some of these conversations in the middle are totally garbled.

Now, Mr. Santacroce picks up material from them. I have notes, if your Honor please, with respect to every one of them. I think out of -- I don't know how many conversations we heard, it seemed like a thousand by eleven o'clock. But however many it was, I would say that maybe twenty per cent of them, maybe twenty-five per cent, to be fair, are conversations in which I was able to say when I completed my listening that I couldn't quarrel with the transcripts - you know, they were there and I could hear them, and whether I liked them or not they're valid.

THE COURT: These were limited to those which Mr. Coffey said he was going to introduce.

MR. HEIMAN: Yes, your Honor.

No, Mr. Coffey was very accommodating, your Honor.

He gave me a list of them and Mr. Santacroce and I sat here and listened to them.

THE COURT: His opening remarks here, before you started to explain your difficulty, had to do with conversations involving non --

MR. COFFEY: Yes, your Honor, non-appearing defendants.

MR. HEIMAN: Those are the ones I listened to last

night, your Honor, conversations between Schaefer and DeSena, conversations between Frascarelli and Schaefer, DeSena --

MR. COFFEY: Every one who is not a defendant.

MR. HEIMAN: Every one who is not here.

MR. COFFEY: Plus a few bettors, your Honor.

MR. HEIMAN: Plus my own, of course, and what they claim to be the other defendants on trial.

* * *

[Tr. pp. 547-553]

BY MR. COFFEY:

Q Agent Santacroce, on March 23rd, 1973 at 18:29 in the evening, which is almost 6:30, was there a call intercepted which involved Mr. Cecil Johnson and Mr. Michael Chiarizio?

A Yes, sir.

THE COURT: What hour was that?

MR. COFFEY: 18:29 is the universal time, your Honor.

THE COURT: All right.

MR. COFFEY: Digital counter setting 69.

Q Do you have a fair and accurate transcript of that conversation?

A Yes sir, I do.

MR. HEIMAN: Same objection, if the Court please, on behalf of all defendants.

MR. COFFEY: May I distribute, your Honor?

THE COURT: An accurate transcript proffered as

Exhibit 111?

MR. COFFEY: It should be the conversation of March 23rd, 1973 at 18:29.

THE COURT: March 23rd of '73.

MR. COFFEY: At 18:29.

THE COURT: Well, I don't know. I haven't seen it.

MR. COFFEY: I don't know if Mr. Phelps has handed it up, your Honor. Apparently not.

THE COURT: What happened to the one we didn't hear?

MR. COFFEY: We just heard it, your Honor.

THE COURT: What? We did?

You mean Exhibit 110, we heard that? All right.

Exhibit 111, accurate, is it?

THE WITNESS: Yes, sir.

THE COURT: In the same way as the others, Mr. Santacroce?

THE WITNESS: Yes, sir.

THE COURT: May be distributed for the assistance to the members of the jury in listening to the tape we are about to hear.

MR. HEIMAN: If your Honor please, may I inquire of the Court and through the Court of Mr. Coffey.

We have been shown these, but apparently there's a flyer on the front of the sheet that's being shown to the jury which is a photocopy of --

THE COURT: Of what?

MR. COFFEY: Your Honor, the cover sheets simply indicate the date of the conversation and the time.

MR. HEIMAN: And the names of the parties that are there, if the Court please. And I think that should not be given to the jury.

THE COURT: Overruled.

MR. DWYER: If your Honor pleases, I would just like to further that in the sense if that was true in the case of my client, Mr. White, Agent Santacroce identified not Mr. White on a number of conversations but a gentlemen or a lady by the name of Pat or Patsy.

And if this card was distributed to the jury with my client's name on it, then it is highly prejudicial.

MR. COFFEY: Your Honor, Agent Santacroce has identified the voices and has identified on the transcripts the first name and has been asked by me who the parties are. And the cover card simply indicates which party is which.

THE COURT: That's right.

MR. COFFEY: Which Agent Santacroce has already identified in the transcript.

It contains no information to which he hasn't already testified.

MR. DWYER: If your Honor please, your recollection is, I'm sure, better than mine. But it seems to me I

recall your Honor specifically asking Agent Santacroce about Pats or Patsy and your Honor saying Okay, let's put it on and listen to it.

There was no mention of Mr. White.

THE COURT: No.

My question was directed to whether or not the party called identified himself or whether the caller identified the party. That's all.

THE WITNESS: That's right.

THE COURT: And that was straightened out.

It was the caller who identified the party, I think. Is that right?

THE WITNESS: As Pats, yes sir.

THE COURT: As Pats, right. That's all that was.

MR. DWYER: Well, I'll sit down, your Honor, after simply reiterating that I feel it is highly prejudicial.

This whole process is self-serving enough without sticking a card in front of the jury identifying the parties.

MR. DANIELS: If the Court please, could we get an instruction to the jury that --

THE COURT: Just a minute.

The jury will take a recess. Leave those exhibits in your seat.

(Whereupon, the jury was excused from the courtroom.)

THE COURT: We've been all through this more than

once, haven't we?

MR. HEIMAN: No, your Honor, we haven't been.

THE COURT: No? I missed something somewhere?

MR. HEIMAN: I'm sorry.

Certainly I don't mean to say that. But what the problem is is this, if the Court please: Your Honor has asked Mr. Santacroce in each instance: Is this a true and accurate transcript of what was on the tape.

THE COURT: Yes.

MR. HEIMAN: Mr. Santacroce has said yes and your Honor has admitted the exhibit.

THE COURT: Right.

MR. HEIMAN: I did not see, because these are not shown to counsel by Mr. Coffey, that there was a card attached to that exhibit which has nothing whatever to do with the transcript.

Now your Honor has been inquiring of the transcript, your Honor has been instructing the jury with respect to the transcript. But that's the first time that I ever saw that card.

THE COURT: I see.

MR. HEIMAN: And if I had seen it before, if the Court please, I would have asked your Honor to excuse the jury and I would have asked that that come off of every single one of them.

THE COURT: I see.

MR. HEIMAN: And that's the basis upon which I rose. I didn't mean to get into a big fight over it.

THE COURT: All right.

I'll give you a considered ruling --

MR. HEIMAN: I'm sure your Honor will.

THE COURT: -- when I return from recess.

We will take a recess.

(Short recess.)

MR. HEIMAN: Your Honor said he would give us a considered ruling, and I'm sure your Honor has considered.

THE COURT: Well, the card attached to the transcript may remain attached to the transcript as it goes to the jury. It's nothing more than a bookkeeping reference to where the tape may be found and to the log which identifies the time and place the tape was taken on the original of the tape.

MR. HEIMAN: And it also indicates, if the Court please, just so the record is clear, the names of who it is claimed the parties are.

THE COURT: To the conversation, yes.

MR. HEIMAN: And to that we object.

THE COURT: Right.

It has no probative evidence. It is merely for the purpose of assisting the jury in their utilization

of the tapes which are in evidence.

MR. HEIMAN: All right. Thank you, your Honor.

* * *

[Tr. pp. 557-559]

(In the presence of the jury:)

* * *

All right. We were considering the admissibility of Government's Exhibit 111. The Court overrules the objections and Exhibit 111, which is again a transcript of a conversation allegedly between Michael Chiarizio and Cecil Johnson, may be admitted to assist the jury, in hearing the tape of that conversation.

Now, members of the jury, you will see, and you have seen before, on these transcripts that have been passed among you for the purpose of assisting you, that in addition to the transcription of the conversation is a card -- is this called a five by three and a half? What is this called?

THE WITNESS: Eight by five.

THE COURT: Eight by five?

Well, anyway, a large filing card, which is nothing more than that in this case. It just contains information that identifies where the tape is, what time the conversation occurred and which wire facility was intercepted, and a digital counter setting.

Now, it also states at the bottom that it's between

named parties. For example, the one you now have, Exhibit 111, says: "Party 1: Michael Chiarizio and Party 2: Cecil Johnson".

This is not evidence that these are the persons who were participating in that conversation. This is to identify what is offered as evidence of a conversation between two such named persons.

It is not evidence itself.. It's just so you can find where it is.

A All right. Are we ready to hear another one?

MR. COFFEY: Yes, your Honor.

Agent McWhorter,

(Whereupon, a tape recording was played to the jury.)

* * *

[Tr. pp. 626-631]

CROSS-EXAMINATION BY MR. HEIMAN:

Q. Now, Mr. Santacroce, your testimony has now extended since last Friday, is that right? You started to testify last Friday?

A Either Thursday or Friday.

Q. Now, Mr. Santacroce, first of all, I think you testified with respect to some voice exemplars, is that correct?

A Yes.

Q. I think you testified that you examined the voice

exemplars; you listened to them. Is that so?

A That's correct.

Q Were you present when the exemplars were taken of all of these various individuals?

A Not of all of them, no, sir.

Q All right. Whose voice exemplars were you present at the taking of?

A Cecil Johnson and Phil Frascarelli, also known as Baskets.

Q So you were present at the taking of two out of how many, twelve, or fourteen?

A I can tell you exactly.

Q All right. Can you, please?

A Yes. Twenty.

Q Twenty?

A Yes.

Q And you were actually present at the taking of two out of twenty?

A That's correct.

Q Is that correct?

When did you first hear these voice exemplars that you've testified to comparing with the tapes, Mr. Santacroce?

A It depends on which one that you referred to. Some I heard earlier than others.

Q Start at the beginning as you have them listed. Give us the name and tell us when you heard the voice exemplar, please.

A Okay. Mr. Cecil Johnson and Phil Frascarelli, the voice exemplars were taken on October the 10th of '73, here in this building.

Q And you heard them at the time that they were given?

A I did.

Q And did you replay them at a subsequent time, Mr. Santacroce?

A Yes, I have.

Q And when was that?

A I compared Mr. Frascarelli's on March 25, '74; and Mr. Johnson's on April 5, '74.

Q All right. And March 25 of '74 was approximately what, ten months after the cessation of the wire interceptions with respect to any of these wiretaps?

A Approximately almost a year after the cessation of USDCT 25.

Q That's the March tap?

A That's right.

Q And about ten months after the May tap?

A That's correct.

Q Which ended on May 13th of 1973?

A That's correct.

Q All right. So that had you played the tapes, Mr. Santacroce, between those two dates; that is, between May and October, or May and April?

A Yes, I think I did. Sure.

Q Do you know whether or not you did?

A I'm quite sure I did.

Q Did you make notes of the fact that you had heard the tapes and that you had listened to these conversations over again?

A No.

Q All right. But your best recollection is that you did?

A Yes.

Q Do you have any idea how many times you listened to the tapes between May of 1973 and April of 1974, when you compared again the voice exemplar?

A Between May of '73 and April, when I compared the voice exemplar, no, I have no idea how many times.

Q Well, I think you told Mr. Coffey at the outset that you had listened to the tapes about six or eight times, is that correct?

A It depends on which one. I listened to some more than others.

Q Well, did you listen to any more than eight times?

A I might have listened to several as many as ten times.

Q Was ten the maximum, the outside limit of the number of times that you've listened to these tapes?

A It would just be an approximation. Possibly, yes. Approximately.

Q That's your best estimate?

A Possibly, yes.

Q That's your best estimate now as you sit here on the witness stand?

A Yes.

Q All right. And that was over a period of approximately two years, is that correct? The last tap having taken place just one month short of two years ago from now?

A No, not two years, because we got the voice exemplar, the first ones, on October the 10th of '73.

Q I'm talking about the tapes now, the tapes themselves, the product of the wiretap.

A You're not talking about the voice exemplars now, you're talking about the original product?

Q That's right.

A I've listened to those numerous times; more than ten times, I'd say.

Q More than ten times?

A Sure.

Q Now, was that because of the fact that you were trying to acquaint yourself with the voices of the individuals, or because you were having difficulty interpreting and understanding the words that were being used as you listened to them.

A I think fairly I could say both.

Q Both. You'll agree with me, will you not, Mr.

Santacroce, that as you listened to these tapes, that is the product of the wiretap, that there is background noise, is that correct, on many of them?

A Definitely.

Q Dogs barking?

A Correct.

Q Television sets running?

A Right.

Q A radio playing?

A Yes.

Q Music in the background, is that correct?

A Sometimes music. Mostly the ballgame.

Q Ballgames, all kinds of things going on, is that right?

A That's correct.

Q And you and I can agree, can we not, Mr. Santacroce, that in many instances the language that is used, the verbiage, the elocution is not clear, isn't that correct?

A That's right.

Q And, as a consequence, in order to understand what's being said it required the repetitive listening to these tapes, isn't that right?

A That's correct, right.

Q And as a matter of fact, Mr. Santacroce, as recently as the last time you listened to the tapes you were hearing

words, were you not, that you had not heard before?

A Correct.

Q So that in order to accomplish this purpose you had to relisten to the tapes a number of times in order to conclude in your own mind what was being said?

A That's right.

* * *

[Tr. pp. 642-657]

Q All right. Now, I think you told us, Mr. Santacroce, that you duplicated -- I think you used the word "dubbed", but actually you're talking about duplicated the tapes, aren't you?

A That's right.

Q And you did that here on one occasion and at the plant on other occasions?

A That's right.

Q When you ran those tapes through did you run them through so that you could listen to them as they were running? That is, was a loudspeaker on the equipment working?

A Yes. These machines were utilized and when you're taking the voice from one tape, playing it into another machine to duplicate the tape, at that time you can also have the speaker out so that you can hear what's going on.

Q Yes. And did you have the speaker out?

A Yes.

Q So you've heard the original tapes?

A All of them.

Q All right. Now, you then prepared transcripts?

A Yes.

Q Is that correct?

A Yes.

Q Would you tell us, Mr. Santacroce, did you make longhand notes when you listened to these tapes to prepare the transcripts?

A No.

Well, let me take that back. Some I did, but they weren't -- in other words, they weren't what you would call proofed longhand notes that they could be typed from. They were for my own purposes. But I didn't prepare transcripts from my handwritings, in other words.

Q These transcripts that are marked as Government exhibits for identification, some of which have been shown to the jury when we had the earphones on, did you type those?

A I did not.

Q A secretary typed them?

A Stenographer. A stenographer typed them, right.

Q Either your secretary or somebody in your office typed them?

A In our New Haven Office.

Q In the New Haven Office. Now, what did she type them from?

A She listened to the tapes.

Q Well, do I understand, then, that these transcripts that have been testified to were not prepared by you, but were prepared by some secretary in the New Haven Office of the FBI?

A That's correct. And then I reviewed them.

Q What did you review them with? The same tapes that she just copied them off of?

A Sure. When she was finished typing the transcripts for a particular day, for instance I would send her the tapes, I would also send her a list --

Q Excuse me. Which tapes are these now that you're talking about, the entire --

A These are the duplicate tapes.

Q The entire set of duplicates, or the summary tapes that you ran off of the duplicates?

A No. These are the duplicate tapes. I would usually have one tape, we'll say for an example March the 25th. I would go over the tapes and decide which calls I wanted to be transcribed.

I would send the girl the particular tape for the day, a Xerox copy of the log which might be of assistance to her, a piece of paper with each call number on it and where she could locate it on the tape by using the digital counter setting.

So when the girl had this she could put the tape

on the machine, run to the counter setting, type that conversation.

Q And listen to it?

A And listen to it.

Q And then place the interpretation that she made from what she heard onto the pieces of paper which are now the transcripts which have been shown to the jury?

A Which were sent back to me and I reviewed, right.

Q And then you placed your interpretation on it?

A Sure.

Q So we have her interpretation, your interpretation of the conversations that were overheard; and you concurred in her interpretations?

A In some instances -- most instances.

Q Well, were there some instances, Mr. Santacroce, where you didn't concur?

A There were some that I had to correct several of the words that might have been mispronounced, or mistyped, or what have you.

Q Or misinterpreted?

A Possibly misinterpreted.

Q So that you had situations with the preparation of these transcripts where you and the girl who typed them was not in agreement with what ultimately was produced, is that correct?

A Very rarely. Sometimes.

Q Well, how many times very rarely?

A I have no idea.

Q Was it more than ten?

A I don't think so.

Q Was it less than five?

A You can't pin me down because I don't know.

Q All right. So that we are left then with the fact that there were instances where you and the girl who listened to the tapes didn't agree, is that correct?

A Sure.

Q And I take it, Mr. Santacroce, that your interpretation prevailed?

A That's right.

Q Because you were the boss?

A That's right.

Q Okay. Now let me ask you this then, Mr. Santacroce: What about the punctuation that appears in these transcripts; commas, periods, no question marks were there? Is that right?

A Where possible punctuation is there. Sometimes it's pretty grim.

Q Again that was based on interpretation, isn't that right?

A Sure.

Q Of what --

A Absolutely, right.

Q Of what the gal overheard and what you overheard?

A That's right.

Q All right. So that it's a fair statement, isn't it, that what you may have heard, what the girl may have heard, and what the jury or I may hear with respect to the positioning of words may differ, isn't that so?

A Certainly.

Q All right. Now you and I can agree, can we not, Mr. Santacroce, that with respect to the interpretation of words, expression and intonation makes a great deal of difference with respect to meaning, isn't that so?

A That's correct.

Q And when you sat on the witness stand last week and this week and read the transcripts as you saw them, it was your intonation and your expression that was produced, was it not?

A That's correct.

Q Not necessarily what we would hear from the tapes?

A That's right.

Q All right. For example, you testified to a call, Mr. Santacroce, on March 25th at 11:18 which you said was Emil to someone, and you used the expression "eighty-six fifty". Do you recall that?

A Yes.

Q Would you see if you can find that for me in the transcripts that you --

A What's the date again, Mr. Heiman?

Q March the 25th at 11:18.

A Okay.

Q I think it's the seventh line down, Mr. Santacroce.

A Yes.

Q Do you see it?

A Sure.

Q You read the line:

"You got eighty-six fifty".

A Right.

Q Is that what he said, or did he say "eight six five zero", or did he say "eight thousand six hundred fifty", or did he say "eighty-six fifty"? What did he say?

A I'd have to hear the tape to know. I would say he said "eighty-six fifty", just like that.

Q But you don't know, do you?

A Not unless I heard the tape.

Q And when you said he said "eighty-six fifty", that was your interpretation and your recollection, isn't that so?

A Sure.

Q All right. Now, also in that same call you used the expression: "They got what, two ball games?"

I can't find it in there. But you said: "They got what, two ball games?" with a question mark. And there were no question marks in any of these transcripts were there, Mr. Santacroce?

A I don't know if there are no question marks in any of the -- there's no question marks in this particular call that I can see.

Q I think if you check the transcripts that you've testified to and from, you will find that there are no question marks in any punctuations.

A All right. At the bottom of the page Mickey says "They got what two baseball games".

Q That's right.

A Emil says: "Yeah, Pittsburgh and Mets".

Q Yes. Now, did he say: "They got what two ball games?" Or "They got what two ball games."

A "They got what two baseball games."

"They got what two baseball games."

Q But you don't know again whether it was with a question or whether it was a statement of fact, or the question was they got what two ball games? Isn't that right?

A We can solve it by playing the tape.

Q I understand that. That's precisely the point that I'm getting at, Mr. Santacroce. What you read from the transcript is the interpretation, the expression and the intonation which you placed on what you heard based now on what you read from the transcripts, isn't that so?

A That's correct.

Q All right. And whether or not that is consistent or inconsistent with the expression and the intonation and

the punctuation of the actual tapes you're not able to tell us, isn't that correct?

A Without hearing the tapes at this time, no.

Q All right. And that, without the necessity of starting with Exhibit 100 and going through all of the exhibits from which you've read, is exactly the same situation with every call that you've read; the expression, the intonation, the meaning of the expression can only be found from the tapes themselves and not from the way that you read it on the stand, isn't that correct?

A That's correct, sir, right.

Q All right. Now let me turn, Mr. Santacroce, if I may, to your testimony concerning whose voices is whose.

Now, are you a speech clinician, Mr. Santacroce?

A No, sir.

Q Have you made a study of speech patterns?

A No.

Q You're a lawyer, or you were; you went to law school, did you not?

A I have a law degree, correct.

Q And you've been an FBI Agent for twenty odd years, twenty-one years?

A Twenty-one years, right.

Q Now have you made a study, Mr. Santacroce, other than whatever training you've had in wiretapping, of electronic distortion of voices?

A No, sir.

Q You and I can agree, can we not, that the voice that's heard through a microphone is different than the voice that we hear talking face to face with an individual?

A I think so. I think we can agree on that.

Q We can also agree, can we not, that the voice that you hear on a telephone is different and distorted from the voice that we hear when we talk to each other?

A Yes, I think so.

Q But you made no study of that, is that correct?

A No study whatsoever.

Q Do you know whether or not the distortion that you hear in a microphone is different than the distortion which you hear in a telephone? I'm talking now voice distortion.

A From my own personal experience?

Q Yes.

A I think there is a little difference.

Q And yet when the voice exemplars were made, both when you observed the voice exemplar that was made of Frascarelli and Mr. Johnson, the combination of a microphone and a telephone was used, is that correct?

A They were both hooked up at the same time, right.

Q There was a combination of a microphone and a telephone, isn't that right?

A Right.

Q And yet you and I can agree that there is a

distinction or a difference in the distortion that's presented in talking into a microphone and the distortion that's presented talking into a telephone, is that not so?

A Sure.

Q All right. But that's how the voice exemplar was made, employing both the telephone and a microphone?

A Yes.

* * *

BY MR. HEIMAN:

Q Now, passing away from that, or leaving that for a minute - I don't like that expression, "passing away from it" - as I understand your testimony, Mr. Santacroce, your basis of comparison of all of these voices that you've testified about is based on your listening to the tapes over and over again and concluding, based on your ear, that these are the people that you've identified, is that correct?

A Yes.

Q Aural oral? A-u-r-a-l, o-r-a-l.

A That's right.

Q The ear hears and you interpret, is that correct?

A That's correct.

Q And you don't have any specialized experience in speech, speech patterns, vocal interpretations or anything else, do you?

A No, I don't. Just an average person.

Q And you listened to them and drew your own

conclusions, is that right?

A That's right.

Q All right. Now, you also, did you not, Mr. Santacroce, you had a preconceived idea of whose voices you were going to hear on these various tapes, didn't you?

A Yes, sir.

Q And that's because you had made an investigation earlier than March of 1973, had you not? You had been investigating this so-called gambling operation?

A Yes.

Q And you prepared the affidavits to be presented to his Honor, to Judge Blumenfeld, did you not?

A Yes, sir.

Q So that when you went into this thing you had an idea of who you were going to hear, isn't that right?

A Some people, yes.

Q Some people. The people whose names were mentioned in the affidavit?

A That's right.

Q And people that you had reason to believe from other investigation that you made might show up on this tap as well, isn't that right?

A That's right.

Q So that you started out expecting to hear certain voices, is that correct?

A Yes.

Q And that goes back to before the time you filed the affidavits in court with Judge Blumenfeld?

A I started out expecting to hear certain people, not certain voices.

Q I'm sorry, I'm sorry. I didn't mean to lay that out like that.

A And it does go back to a prior time, yes.

Q You expected to hear certain individuals, people talking on these telephones that you were going to tap?

A Right.

Q So that, in effect, you had a preconceived idea of who you were going to hear?

A In some instances, yes.

Q All right. And then you intercepted the calls, you wiretapped these phones?

A Right.

Q Then you played the tapes over, is that correct?

A Yes.

Q With the preconceived ideas that you had developed back in February and March and April, when you were involved in this, is that right? You had that idea?

A And other information too, yes, right.

Q And then having all of that material in mind you concluded that these individuals that you thought back in March you were going to hear, that you did hear. Is that correct?

A. Sure.

* * *

[Tr. p. 661]

Q And again with respect to the names that are connected with this, especially with respect to the cards which are on the exhibits that went to the jury, again that's your opinion of who the people are involved in these conversations?

A Absolutely.

Q Is that correct?

A Right.

Q Based again on all of the elements that you and I have discussed, hearing the tapes and concluding, is that correct?

A Yes, and other information.

* * *

PHOTOCOPY OF F.B.I. CARD ATTACHED TO GOVERNMENT EXHIBIT 66
FOR IDENTIFICATION

92 A

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT
CRIMINAL NO. H-74-51

TRANSCRIPT NO:

DATE OF CONVERSATION: March 24, 1973

TIME: 13:33

INTERCEPTED WIRE FACILITY: 247-5976

USDCT: 25

EXHIBIT NUMBER OF RECORDING:

DIGITAL COUNTER SETTING: 105

PARTY #1: Michael Chiarizio

PARTY #2: Peter Sheridan



GOVERNMENT EXHIBIT 66 FOR IDENTIFICATION

Time	Initial	IC	Activity Recorded	NHDCT #25
		OG		
33	EJM	IC	MICKEY: Hello PETE: (Inaudible) Pete MICKEY: Yeah Pete PETE: I wanna give you Jack's stuff MICKEY: Go ahead PETE: Indiana plus the 14 MICKEY: Indiana plus 14 yeah PETE: Yeah, Notre Dame plus the 5,4 on each, 240 parlay MICKEY: Wait a minute PETE: Memphis State MICKEY: Wait a minute 240 parlay PETE: Yeah MICKEY: Memphis State PETE: Yeah Memphis State plus the 4 (inaudible) got any changes. MICKEY: No PETE: No MICKEY: No PETE: Oh, okay, I'm just going back and forth myself. MICKEY: Okay PETE: Bye	

Court Exhibit 66
Case No. H-74-51 Type Crim
Full Exhibit

Apr 18 1975

FOR IDENTIFICATION
U. S. DISTRICT COURT
DISTRICT OF CONN.

Log 3 Page 27	Employee's Name	Date Stamp
Day Sat Date 3/24/73	EMMETT J. MICHAELS	

PHOTOCOPY OF F. B. I. CARD ATTACHED TO GOVERNMENT EXHIBIT 67
FOR IDENTIFICATION

94 A

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT
CRIMINAL NO. H-74-51

TRANSCRIPT NO:

DATE OF CONVERSATION: March 25, 1973

TIME: 11:53

INTERCEPTED WIRE FACILITY: 247-5976

USDCT: 25

EXHIBIT NUMBER OF RECORDING:

DIGITAL COUNTER SETTING: 166

PARTY #1: Peter Sheridan

PARTY #2: Michael Chiarizio



GOVERNMENT EXHIBIT 67 FOR IDENTIFICATION

Time	Initial	IC	Activity Recorded	NHDCT #25
3	RDL	OG	(563-4418)	
			PETE: Hello	
			MICKEY: Yeah Pete	
			PETE: Yeah Mickey 7 ahead for the week.	
			MICKEY: 7	
			PETE: Yeah, blew back from yesterday.	
			MICKEY: Huh	
			PETE: I blew a little back I was ahead going into the last game.	
			MICKEY: Hmm	
			PETE: Picked up about 800 in the early two games. They all bet me that Indiana. What did how did you do.	
			MICKEY: Huh	
			PETE: How did you do.	
			MICKEY: I did alright	
			PETE: You did okay	
			MICKEY: Yep	
			PETE: You needed ah UCLA to win. I mean Indiana to win.	
			MICKEY: Yeah	
			PETE: You did	
			MICKEY: The only one that hit me was Jack	
			PETE: Jack yeah I know yeah you you	
			MICKEY: Two days in a row	
			PETE: Yeah a hit you he he hit the other guy he said	
			MICKEY: Hmm	
			PETE: Talked to him he said he hit him picked them both yesterday was	
			MICKEY: Well this is all there is I'm closing 2 one thirty.	
			PETE: One thirty yeah	
			MICKEY: Notre Dame is 4	
			PETE: Notre Dame is 4	
			MICKEY: One o'clock	
			PETE: One o'clock	
			MICKEY: Pittsburgh is a pick with the Mets one thirty.	
			PETE: Is a pick with the Met	
			MICKEY: Baltimore is a pick wi one thirty.	
			PETE: Is a pick with the Yan	
			MICKEY: Then the Philadelphia F over the Blues	

Log 4 Page 18
Day Sun Date 3/25/73

Employee's Name
Richard D.
Ludwig

Gov't Exhibit 67
Case No. H-74-51 Type Crim
Full Exhibit

Apr 18 1975
FOR IDENTIFICATION
U.S. DISTRICT COURT
DISTRICT OF CONN.

Time	Initial IC	Activity Recorded	NHDCT #25
	OG		
PETE: I 1 1/2 over the Blues			
MICKEY: That's at 3 o'clock but I'm			
quitting at one thirty.			
PETE: One thirty (inaudible) that's when			
the baseball game goes			
MICKEY: Right			
PETE: Okay			
MICKEY: Bye			

Log 4 Page 19	Employee's Name	Date Stamp
Day Sun Date 3/25/73	RICHARD D. LUDWIG	

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA :
VS. : DOCKET NO. 75-1224
MICHAEL CHIARIZIO :

CERTIFICATION

This is to certify that on the 28th day of August, 1975, I served two copies of the Appellant's Brief and one copy of the Appendix of the Appellant, by depositing the same in the United States mail, postage prepaid, addressed as follows: Paul E. Coffey, Esq., Special Attorney, United States District Court, 450 Main Street, Hartford, Connecticut.

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